

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

IDRIS LADELL YOUNG,

Defendant-Appellant.

UNPUBLISHED

June 23, 2011

No. 297858

Saginaw Circuit Court

LC No. 09-032752-FC

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I agree with the majority that defendant's convictions should be affirmed and that the sentencing guidelines were properly scored. I write separately as I would remand the case for imposition of concurrent sentences for the crimes of carjacking and conspiracy to commit carjacking.¹

The carjacking statute, MCL 750.529a(3), provides for consecutive sentencing as follows: "A sentence imposed for a violation of this section may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction." I conclude that the Legislature intended this provision to apply when the carjacking was accompanied by some other substantive offense, such as robbery, kidnapping, or criminal sexual conduct, rather than where the only other charge was for conspiracy to commit the very same carjacking. Defendant was sentenced to a 23-year minimum term for carjacking the complainant's vehicle and to a consecutive 23-year minimum term for conspiracy to commit the same carjacking. Such a reading of the statute raises both due process and proportionality concerns as it permits a doubling of an offender's sentence merely because he did not act alone. Further, I believe it is inconsistent with our Supreme Court's ruling that MCL 750.529a does not

¹ Although defendant did not raise this issue on appeal, because it raises constitutional concerns, "justice requires [it] be considered and resolved." *LME v ARS*, 261 Mich App 273, 287; 680 NW2d 902 (2004) (quotation and citation omitted). Addressing a controlling legal issue despite the failure of the parties to raise or frame the issue "is a well understood judicial principle." *Mack v Detroit*, 467 Mich 186, 207; 649 NW2d 47(2002). The decision to address "an issue not briefed or contested by the parties is left to [the] discretion of the Court." *Id.* (citation omitted).

permit multiple carjacking charges to arise from a single carjacking where there are multiple victims. *People v Davis*, 468 Mich 77, 82; 658 NW2d 800 (2003).

Accordingly, I would remand for the imposition of concurrent sentences. If the trial court believes that there are factors that justify imposing a minimum sentence in excess of the guideline range, then the court may do so and set forth those factors.

/s/ Douglas B. Shapiro